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Attorneys for Plaintiff Miguel Ángel Garcia

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

MIGUEL ANGEL GARCIA a.k.a.  
MIKEY GARCIA, an individual,

Plaintiff,

v.

TOP RANK, INC., a Nevada  
corporation; and DOES 1-10,  
inclusive,

Defendants.

Case No. EDCV 14-928 JAK (SPx)

**DISCOVERY MATTER**

**STIPULATION FOR PROTECTIVE  
ORDER**

Judge: Hon. John A. Kronstadt  
Magistrate: Hon. Sheri Pym  
Discovery Cut-off: January 27, 2015  
Trial Date: May 5, 2015

1 WHEREAS, discovery activity in this action is likely to involve production  
2 and disclosure of certain documents and information pertaining to the parties'  
3 commercially sensitive or private information, which require special protection  
4 from public disclosure;

5 WHEREAS, the parties desire to litigate this action without jeopardizing  
6 their commercially sensitive or private information, or the commercially sensitive  
7 or private information of any third party;

8 WHEREAS, the parties met and conferred in an effort to agree to the terms  
9 of a proposed protective order;

10 WHEREAS, Exhibit A is a Modified Standing Protective Order For Cases  
11 Assigned To Judge John A. Kronstadt;

12 WHEREAS, the parties have conferred, stipulate, and propose to adopt  
13 Exhibit A as the operative protective order in this matter;

14 WHEREAS, the parties attach Exhibit B, which is a redline illustrating  
15 Exhibit A's proposed modifications to Judge Kronstadt's Standing Protective  
16 Order;

17 IT IS THEREFORE AGREED, STIPULATED, AND REQUESTED by and  
18 between the parties, through their respective attorneys of record, that for good cause  
19 shown, Exhibit A as the operative protective order governing this matter.

20  
21 IT IS SO ORDERED this 7<sup>th</sup> day of August, 2014.

22  
23 

24 \_\_\_\_\_  
The Honorable Sheri Pym  
United States Magistrate Judge

1 Dated: August 5, 2014

Respectfully Submitted,

2 DANIEL M. PETROCELLI  
3 DAVID MARROSO  
4 HARRISON A. WHITMAN  
O'MELVENY & MYERS LLP

5 By: /s/ David Marroso

6 David Marroso  
7 Attorneys for Defendant  
8 Top Rank, Inc.

9 BRYAN J. FREEDMAN  
10 JESSE KAPLAN  
11 BRIAN E. TURNAUER  
FREEDMAN + TAITELMAN, LLP

12 By: /s/ Brian Turnauer

13 Brian E. Turnauer  
14 Attorneys for Plaintiff  
15 Miguel Angel Garcia

16  
17 Attestation

18 Pursuant to Local Rule 5-4.3.4(a)(2)(i), the filer attests that all other  
19 signatories listed, and on whose behalf the filing is submitted, concur in the filing's  
20 content and have authorized the filing.

21  
22 Dated: August 5, 2014

O'MELVENY & MYERS LLP

23 By: /s/ David Marroso

24 David Marroso  
25 Attorneys for Defendant  
26 Top Rank, Inc.

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## **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MIGUEL ANGEL GARCIA a.k.a.  
MIKEY GARCIA, an individual,

Plaintiff,

v.

TOP RANK, INC., a Nevada  
corporation; and DOES 1-10,  
inclusive,

Defendants.

Case No. EDCV 14-928 JAK (SPx)

**MODIFIED STANDING  
PROTECTIVE ORDER FOR CASES  
ASSIGNED TO JUDGE JOHN A.  
KRONSTADT**

Judge: Hon. John A. Kronstadt  
Magistrate: Hon. Sheri Pym

1           **1.           PURPOSE AND LIMITS OF THIS ORDER**

2           Discovery in this action is likely to involve confidential, proprietary, or  
3 private information requiring special protection from public disclosure and from  
4 use for any purpose other than this litigation. Thus, the Court enters this Protective  
5 Order. This Order does not confer blanket protections on all disclosures or  
6 responses to discovery, and the protection it gives from public disclosure and use  
7 extends only to the specific material entitled to confidential treatment under the  
8 applicable legal principles. This Order does not automatically authorize the filing  
9 under seal of material designated under this Order. Instead, the parties must  
10 comply with Local Rule 79-5.1 and this Court's Order Re Pilot Program for Under  
11 Seal Documents if they seek to file anything under seal. This Order does not  
12 govern the use at trial of material designated under this Order.

13           **2.           DESIGNATING PROTECTED MATERIAL**

14           **2.1           Over-Designation Prohibited.** Any party or non-party who

15 designates information or items for protection under this Order as  
16 "CONFIDENTIAL," or "HIGHLY CONFIDENTIAL – ATTORNEY EYES  
17 ONLY" (a "designator") must only designate specific material that qualifies under  
18 the appropriate standards. To the extent practicable, only those parts of documents,  
19 items, or oral or written communications that require protection shall be designated.  
20 Designations with a higher confidentiality level when a lower level would suffice  
21 are prohibited. Mass, indiscriminate, or routinized designations are prohibited.  
22 Unjustified designations expose the designator to sanctions, including the Court's  
23 striking all confidentiality designations made by that designator. Designation under  
24 this Order is allowed only if the designation is necessary to protect material that, if  
25 disclosed to persons not authorized to view it, would cause competitive or other  
26 recognized harm. Material may not be designated if it has been made public, or if  
27 designation is otherwise unnecessary to protect a secrecy interest. If a designator  
28 learns that information or items that it designated for protection do not qualify for

1 protection at all or do not qualify for the level of protection initially asserted, that  
2 designator must promptly notify all parties that it is withdrawing the mistaken  
3 designation.

4 **2.2 Manner and Timing of Designations.** Designation under this  
5 Order requires the designator to affix the applicable legend (“CONFIDENTIAL” or  
6 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” ) to each page that  
7 contains protected material. For testimony given in deposition or other proceeding,  
8 the designator shall specify all protected testimony and the level of protection being  
9 asserted. It may make that designation during the deposition or proceeding, or may  
10 invoke, on the record or by written notice to all parties on or before the next  
11 business day, a right to have up to 21 days from the deposition or proceeding to  
12 make its designation.

13 **2.2.1** A party or non-party that makes original documents or materials  
14 available for inspection need not designate them for protection until after the  
15 inspecting party has identified which material it would like copied and produced.  
16 During the inspection and before the designation, all material shall be treated as  
17 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY. After the inspecting  
18 party has identified the documents it wants copied and produced, the producing  
19 party must designate the documents, or portions thereof, that qualify for protection  
20 under this Order.

21 **2.2.2.** Parties shall give advance notice if they expect a deposition or  
22 other proceeding to include designated material so that the other parties can ensure  
23 that only authorized individuals are present at those proceedings when such  
24 material is disclosed or used. The use of a document as an exhibit at a deposition  
25 shall not in any way affect its designation. Transcripts containing designated  
26 material shall have a legend on the title page noting the presence of designated  
27 material, and the title page shall be followed by a list of all pages (including line  
28 numbers as appropriate) that have been designated, and the level of protection being

1 asserted. The designator shall inform the court reporter of these requirements. Any  
 2 transcript that is prepared before the expiration of the 21-day period for designation  
 3 shall be treated during that period as if it had been designated HIGHLY  
 4 CONFIDENTIAL – ATTORNEY EYES ONLY unless otherwise agreed. After the  
 5 expiration of the 21-day period, the transcript shall be treated only as actually  
 6 designated.

7 **2.2.3.** The parties shall have the right to designate materials produced  
 8 by third parties in this action as “CONFIDENTIAL” or “HIGHLY  
 9 CONFIDENTIAL – ATTORNEYS EYES ONLY” within seven (7) days of the  
 10 production of such materials in this action. During the seven day period, all  
 11 material produced by a third party shall be treated as HIGHLY CONFIDENTIAL –  
 12 ATTORNEY EYES ONLY.

13 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to  
 14 designate does not, standing alone, waive protection under this Order. Upon timely  
 15 assertion or correction of a designation, all recipients must make reasonable efforts  
 16 to ensure that the material is treated according to this Order.

### 17 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

18 All challenges to confidentiality designations shall proceed under Local Rule  
 19 37-1 through Local Rule 37-4.

### 20 **4. ACCESS TO DESIGNATED MATERIAL**

21 **4.1 Basic Principles.** A receiving party may use designated  
 22 material only for this litigation. Designated material may be disclosed only to the  
 23 categories of persons and under the conditions described in this Order.

24 **4.2 Disclosure of CONFIDENTIAL Material Without Further**  
 25 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the  
 26 designator, a receiving party may disclose any material designated  
 27 CONFIDENTIAL only to:

28 **4.2.1** The receiving party’s outside counsel of record in this action



1 and employees of outside counsel of record to whom disclosure is reasonably  
2 necessary;

3 **4.2.2** The officers, directors, and employees of the receiving party to  
4 whom disclosure is reasonably necessary, and who have signed the Agreement to  
5 Be Bound (Exhibit E-1);

6 **4.2.3** Experts retained by the receiving party's outside counsel of  
7 record to whom disclosure is reasonably necessary, and who have signed the  
8 Agreement to Be Bound (Exhibit E-1);

9 **4.2.4** The Court and its personnel;

10 **4.2.5** Outside court reporters and their staff, professional jury or trial  
11 consultants, and professional vendors to whom disclosure is reasonably necessary,  
12 and who have signed the Agreement to Be Bound (Exhibit E-1);

13 **4.2.6** During their depositions, witnesses in the action to whom  
14 disclosure is reasonably necessary and who have signed the Agreement to Be  
15 Bound (Exhibit E-1)

16 **4.2.7** The author or recipient of a document containing the material, or  
17 a custodian or other person who otherwise possessed or knew the information;

18 **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY**  
19 **EYES ONLY Material Without Further Approval.** Unless permitted in writing  
20 by the designator, a receiving party may disclose material designated HIGHLY  
21 CONFIDENTIAL – ATTORNEY EYES ONLY without further approval only to:

22 **4.3.1** The receiving party's outside counsel of record in this action  
23 and employees of outside counsel of record to whom it is reasonably necessary to  
24 disclose the information;

25 **4.3.2** The Court and its personnel;

26 **4.3.3** Outside court reporters and their staff, professional jury or trial  
27 consultants, and professional vendors to whom disclosure is reasonably necessary,  
28 and who have signed the Agreement to Be Bound (Exhibit E-1);

1           **4.3.4**           The author or recipient of a document containing the material, or  
2 a custodian or other person who otherwise possessed or knew the information; and

3           **4.4           Procedures for Approving or Objecting to Disclosure of**  
4 **HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY Material to In-**  
5 **House Counsel or Experts.** Unless agreed to in writing by the designator:

6           **4.4.1**           A party seeking to disclose to in-house counsel any material  
7 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must first  
8 make a written request to the designator providing the full name of the in-house  
9 counsel, the city and state of such counsel's residence, and such counsel's current  
10 and reasonably foreseeable future primary job duties and responsibilities in  
11 sufficient detail to determine present or potential involvement in any competitive  
12 decision-making.

13           **4.4.2**           A party seeking to disclose to an expert retained by outside  
14 counsel of record any information or item that has been designated HIGHLY  
15 CONFIDENTIAL – ATTORNEY EYES ONLY must first make a written request  
16 to the designator that (1) identifies the general categories of HIGHLY  
17 CONFIDENTIAL – ATTORNEY EYES ONLY information that the receiving  
18 party seeks permission to disclose to the expert, (2) sets forth the full name of the  
19 expert and the city and state of his or her primary residence, (3) attaches a copy of  
20 the expert's current resume, (4) identifies the expert's current employer(s), (5)  
21 identifies each person or entity from whom the expert has received compensation or  
22 funding for work in his or her areas of expertise (including in connection with  
23 litigation) in the past five years, and (6) identifies (by name and number of the case,  
24 filing date, and location of court) any litigation where the expert has offered expert  
25 testimony, including by declaration, report, or testimony at deposition or trial, in the  
26 past five years. If the expert believes any of this information at (4) - (6) is subject  
27 to a confidentiality obligation to a third party, then the expert should provide  
28 whatever information the expert believes can be disclosed without violating any

1 confidentiality agreements, and the party seeking to disclose the information to the  
2 expert shall be available to meet and confer with the designator regarding any such  
3 confidentiality obligations.

4 **4.4.3** A party that makes a request and provides the information  
5 specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the  
6 identified in-house counsel or expert unless, within seven days of delivering the  
7 request, the party receives a written objection from the designator providing  
8 detailed grounds for the objection.

9 **4.4.4** All challenges to objections from the designator shall proceed  
10 under Local Rule 37-1 through Local Rule 37-4.

11 **5. PROTECTED MATERIAL SUBPOENAED OR**  
12 **ORDERED PRODUCED IN OTHER LITIGATION**

13 **5.1 Subpoenas and Court Orders.** This Order in no way excuses  
14 non-compliance with a lawful subpoena or court order. The purpose of the duties  
15 described in this section is to alert the interested parties to the existence of this  
16 Order and to give the designator an opportunity to protect its confidentiality  
17 interests in the court where the subpoena or order issued.

18 **5.2 Notification Requirement.** If a party is served with a subpoena  
19 or a court order issued in other litigation that compels disclosure of any information  
20 or items received by that party in this action and designated in this action as  
21 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,  
22 that party must do the following.

23 **5.2.1** Promptly notify the designator in writing. Such notification shall  
24 include a copy of the subpoena or court order.

25 **5.2.2** Promptly notify in writing the party who caused the subpoena or  
26 order to issue in the other litigation that some or all of the material covered by the  
27 subpoena or order is subject to this Order. Such notification shall include a copy of  
28 this Order.

1           **5.2.3**           Cooperate with all reasonable procedures sought by the  
2           designator whose material may be affected.

3           **5.3**           **Wait For Resolution of Protective Order.** If the designator  
4           promptly seeks a protective order, the party served with the subpoena or court order  
5           shall not produce any information designated in this action as CONFIDENTIAL or  
6           HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY before a determination  
7           by the court where the subpoena or order issued, unless the party has obtained the  
8           designator's permission. The designator shall bear the burden and expense of  
9           seeking protection of its confidential material in that court.

10           **6.           UNAUTHORIZED DISCLOSURE OF DESIGNATED**  
11           **MATERIAL**

12           If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
13           designated material to any person or in any circumstance not authorized under this  
14           Order, it must immediately (1) notify in writing the designator of the unauthorized  
15           disclosures, (2) use its best efforts to retrieve all unauthorized copies of the  
16           designated material, (3) inform the person or persons to whom unauthorized  
17           disclosures were made of all the terms of this Order, and (4) use reasonable efforts  
18           to have such person or persons execute the Agreement to Be Bound (Exhibit E-1).

19           **7.           INADVERTENT PRODUCTION OF PRIVILEGED OR**  
20           **OTHERWISE PROTECTED MATERIAL**

21           When a producing party gives notice that certain inadvertently produced  
22           material is subject to a claim of privilege or other protection, the obligations of the  
23           receiving parties are those set forth in Fed. R. Civ. P. 26(b)(5)(B). This provision is  
24           not intended to modify whatever procedure may be established in an e-discovery  
25           order that provides for production without prior privilege review pursuant to Fed.  
26           R. Evid. 502(d) and (e).

27           **8.           FILING UNDER SEAL**

28           Without written permission from the designator or a Court order, a party may

1 not file in the public record in this action any designated material. A party seeking  
2 to file under seal any designated material must comply with Local Rule 79-5.  
3 Filings may be made under seal only pursuant to a court order authorizing the  
4 sealing of the specific material at issue. The fact that a document has been  
5 designated under this Order is insufficient to justify filing under seal. Instead,  
6 parties must explain the basis for confidentiality of each document sought to be  
7 filed under seal. Because a party other than the designator will often be seeking to  
8 file designated material, cooperation between the parties in preparing, and in  
9 reducing the number and extent of, requests for under seal filing is essential. If a  
10 *receiving party's* request to file designated material under seal pursuant to Local  
11 Rule 79-5.1 is denied by the Court, then the receiving party *may file the material in*  
12 *the public record* unless (1) *the designator* seeks reconsideration within seven days  
13 of the denial, or (2) as otherwise instructed by the Court.

14 **9. HANDLING AND DISPOSITION OF MATERIALS;**  
15 **FINAL DISPOSITION OF MATERIALS**

16 Within 60 days after the final disposition of this action, each party shall  
17 return all designated material to the designator or destroy such material, including  
18 all copies, abstracts, compilations, summaries, and any other format reproducing or  
19 capturing any designated material. The receiving party must submit a written  
20 certification to the designator by the 60-day deadline that (1) identifies (by  
21 category, where appropriate) all the designated material that was returned or  
22 destroyed, and (2) affirms that the receiving party has not retained any copies,  
23 abstracts, compilations, summaries, or any other format reproducing or capturing  
24 any of the designated material. This provision shall not prevent counsel from  
25 retaining an archival copy of all pleadings, motion papers, trial, deposition, and  
26 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,  
27 expert reports, attorney work product, and consultant and expert work product, even  
28 if such materials contain designated material. Any such archival copies remain

subject to this Order.

**10. FURTHER APPLICATION**

Nothing in this Order shall preclude any party from applying to the Court for additional or different protective provisions with respect to specific material if the need should arise during this litigation. The Court shall retain jurisdiction over the parties, and over any person executing an undertaking to be bound by the terms of this Order, during the pendency of this action and for such time thereafter as is needed to carry out the terms of this Order.

**11. MODIFICATION BY PARTIES**

This Order may be modified or amended by the parties, subject to approval of the Court, provided it is in the form of a stipulation that shall be filed and made part of the record in this case.

**12. RESERVATION OF RIGHTS**

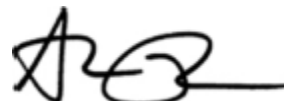
By designating any material “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY” the parties do not acknowledge that any such material is relevant, discoverable, or admissible in this action. All parties reserve the right to seek discovery of, or alternatively to resist discovery of, such material in this action.

**13. USE OF OWN MATERIALS**

Notwithstanding the foregoing, any party may use any materials or information designated by it for any purpose whatsoever.

**IT IS SO ORDERED.**

Dated: August 7, 2014



HON. SHERI PYM  
UNITED STATES MAGISTRATE JUDGE

EXHIBIT E-1

AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its  
entirety and understand the Protective Order that was issued by the United States  
District Court for the Central District of California on \_\_\_\_\_ [date] in the case  
of \_\_\_\_\_ **[insert formal name of the case and the number and initials  
assigned to it by the court]**. I agree to comply with and to be bound by all the  
terms of this Protective Order, and I understand and acknowledge that failure to  
so comply could expose me to sanctions and punishment for contempt. I solemnly  
promise that I will not disclose in any manner any information or item that is  
subject to this Protective Order to any person or entity except in strict compliance  
with this Order.

I further agree to submit to the jurisdiction of the United States District  
Court for the Central District of California for the purpose of enforcing this  
Order, even if such enforcement proceedings occur after termination of this  
action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and  
telephone number] as my California agent for service of process in connection  
with this action or on any proceedings related to enforcement of this Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

[printed name]

Signature: \_\_\_\_\_

[signature]

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## **EXHIBIT B**



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7 **UNITED STATES DISTRICT COURT**  
8 **CENTRAL DISTRICT OF CALIFORNIA**  
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10 MIGUEL ANGEL GARCIA a.k.a.  
11 MIKEY GARCIA, an individual,

12 Plaintiff,

13 v.

14 Defendant(s).TOP RANK, INC., a  
15 Nevada corporation; and DOES 1-  
16 10, inclusive,

17 Defendants.  
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Case No. EDCV 14-928 JAK (SPx)

**MODIFIED STANDING  
PROTECTIVE ORDER FOR CASES  
ASSIGNED TO JUDGE JOHN A.  
KRONSTADT**

Judge: Hon. John A. Kronstadt  
Magistrate: Hon. Sheri Pym

5. **PURPOSE AND LIMITS OF THIS ORDER**

1 Discovery in this action is likely to involve confidential, proprietary, or  
2 private information requiring special protection from public disclosure and from  
3 use for any purpose other than this litigation. Thus, the Court enters this Protective  
4 Order. This Order does not confer blanket protections on all disclosures or  
5 responses to discovery, and the protection it gives from public disclosure and use  
6 extends only to the specific material entitled to confidential treatment under the  
7 applicable legal principles. This Order does not automatically authorize the filing  
8 under seal of material designated under this Order. Instead, the parties must  
9 comply with Local Rule 79-5.1 and this Court's Order Re Pilot Program for Under  
10 Seal Documents if they seek to file anything under seal. This Order does not  
11 govern the use at trial of material designated under this Order.

12 6. **DESIGNATING PROTECTED MATERIAL**

13 2.1 **Over-Designation Prohibited.** Any party or non-party who

14 designates information or items for protection under this Order as  
15 "CONFIDENTIAL," or "HIGHLY CONFIDENTIAL – ATTORNEY EYES  
16 ONLY" (a "designator") must only designate specific material that qualifies under  
17 the appropriate standards. To the extent practicable, only those parts of documents,  
18 items, or oral or written communications that require protection shall be designated.  
19 Designations with a higher confidentiality level when a lower level would suffice  
20 are prohibited. Mass, indiscriminate, or routinized designations are prohibited.  
21 Unjustified designations expose the designator to sanctions, including the Court's  
22 striking all confidentiality designations made by that designator. Designation under  
23 this Order is allowed only if the designation is necessary to protect material that, if  
24 disclosed to persons not authorized to view it, would cause competitive or other  
25 recognized harm. Material may not be designated if it has been made public, or if  
26 designation is otherwise unnecessary to protect a secrecy interest. If a designator  
27 learns that information or items that it designated for protection do not qualify for

1 protection at all or do not qualify for the level of protection initially asserted, that  
2 designator must promptly notify all parties that it is withdrawing the mistaken  
3 designation.

4 **2.2 Manner and Timing of Designations.** Designation under this  
5 Order requires the designator to affix the applicable legend (“CONFIDENTIAL” or  
6 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” ) to each page that  
7 contains protected material. For testimony given in deposition or other proceeding,  
8 the designator shall specify all protected testimony and the level of protection being  
9 asserted. It may make that designation during the deposition or proceeding, or may  
10 invoke, on the record or by written notice to all parties on or before the next  
11 business day, a right to have up to 21 days from the deposition or proceeding to  
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13 **2.2.1** A party or non-party that makes original documents or materials  
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16 During the inspection and before the designation, all material shall be treated as  
17 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY. After the inspecting  
18 party has identified the documents it wants copied and produced, the producing  
19 party must designate the documents, or portions thereof, that qualify for protection  
20 under this Order.

21 **2.2.2.** Parties shall give advance notice if they expect a deposition or  
22 other proceeding to include designated material so that the other parties can ensure  
23 that only authorized individuals are present at those proceedings when such  
24 material is disclosed or used. The use of a document as an exhibit at a deposition  
25 shall not in any way affect its designation. Transcripts containing designated  
26 material shall have a legend on the title page noting the presence of designated  
27 material, and the title page shall be followed by a list of all pages (including line  
28 numbers as appropriate) that have been designated, and the level of protection being

1 asserted. The designator shall inform the court reporter of these requirements. Any  
 2 transcript that is prepared before the expiration of the 21-day period for designation  
 3 shall be treated during that period as if it had been designated HIGHLY  
 4 CONFIDENTIAL – ATTORNEY EYES ONLY unless otherwise agreed. After the  
 5 expiration of the 21-day period, the transcript shall be treated only as actually  
 6 designated.

7 **2.2.3.** The parties shall have the right to designate materials produced  
 8 by third parties in this action as “CONFIDENTIAL” or “HIGHLY  
 9 CONFIDENTIAL – ATTORNEYS EYES ONLY” within seven (7) days of the  
 10 production of such materials in this action. During the seven day period, all  
 11 material produced by a third party shall be treated as HIGHLY CONFIDENTIAL –  
 12 ATTORNEY EYES ONLY.

13 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to  
 14 designate does not, standing alone, waive protection under this Order. Upon timely  
 15 assertion or correction of a designation, all recipients must make reasonable efforts  
 16 to ensure that the material is treated according to this Order.

## 17 **7. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

18 All challenges to confidentiality designations shall proceed under Local Rule  
 19 37-1 through Local Rule 37-4.

## 20 **8. ACCESS TO DESIGNATED MATERIAL**

21 **4.1 Basic Principles.** A receiving party may use designated  
 22 material only for this litigation. Designated material may be disclosed only to the  
 23 categories of persons and under the conditions described in this Order.

24 **4.2 Disclosure of CONFIDENTIAL Material Without Further**  
 25 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the  
 26 designator, a receiving party may disclose any material designated  
 27 CONFIDENTIAL only to:

28 **4.2.1** The receiving party’s outside counsel of record in this action

and employees of outside counsel of record to whom disclosure is reasonably necessary;

1           **4.2.2**           The officers, directors, and employees of the receiving party to  
2 whom disclosure is reasonably necessary, and who have signed the Agreement to  
3 Be Bound (Exhibit E-1);

4           **4.2.3**           Experts retained by the receiving party's outside counsel of  
5 record to whom disclosure is reasonably necessary, and who have signed the  
6 Agreement to Be Bound (Exhibit E-1);

7           **4.2.4**           The Court and its personnel;

8           **4.2.5**           Outside court reporters and their staff, professional jury or trial  
9 consultants, and professional vendors to whom disclosure is reasonably necessary,  
10 and who have signed the Agreement to Be Bound (Exhibit E-1);

11           **4.2.6**           During their depositions, witnesses in the action to whom  
12 disclosure is reasonably necessary and who have signed the Agreement to Be  
13 Bound (Exhibit E-1)

14           **4.2.7**           The author or recipient of a document containing the material, or  
15 a custodian or other person who otherwise possessed or knew the information;

16           **4.3           Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY**  
17 **EYES ONLY Material Without Further Approval.** Unless permitted in writing  
18 by the designator, a receiving party may disclose material designated HIGHLY  
19 CONFIDENTIAL – ATTORNEY EYES ONLY without further approval only to:

20           **4.3.1**           The receiving party's outside counsel of record in this action  
21 and employees of outside counsel of record to whom it is reasonably necessary to  
22 disclose the information;

23           **4.3.2**           The Court and its personnel;

24           **4.3.3**           Outside court reporters and their staff, professional jury or trial  
25 consultants, and professional vendors to whom disclosure is reasonably necessary,  
26 and who have signed the Agreement to Be Bound (Exhibit E-1);

4.3.4 The author or recipient of a document containing the material, or a custodian or other person who otherwise possessed or knew the information; and

4.4 **Procedures for Approving or Objecting to Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY Material to In-House Counsel or Experts.** Unless agreed to in writing by the designator:

4.4.1 A party seeking to disclose to in-house counsel any material designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must first make a written request to the designator providing the full name of the in-house counsel, the city and state of such counsel's residence, and such counsel's current and reasonably foreseeable future primary job duties and responsibilities in sufficient detail to determine present or potential involvement in any competitive decision-making.

4.4.2 A party seeking to disclose to an expert retained by outside counsel of record any information or item that has been designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must first make a written request to the designator that (1) identifies the general categories of HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY information that the receiving party seeks permission to disclose to the expert, (2) sets forth the full name of the expert and the city and state of his or her primary residence, (3) attaches a copy of the expert's current resume, (4) identifies the expert's current employer(s), (5) identifies each person or entity from whom the expert has received compensation or funding for work in his or her areas of expertise (including in connection with litigation) in the past five years, and (6) identifies (by name and number of the case, filing date, and location of court) any litigation where the expert has offered expert testimony, including by declaration, report, or testimony at deposition or trial, in the past five years. If the expert believes any of this information at (4) - (6) is subject to a confidentiality obligation to a third party, then the expert should provide whatever information the expert believes can be disclosed without violating any

confidentiality agreements, and the party seeking to disclose the information to the expert shall be available to meet and confer with the designator regarding any such confidentiality obligations.

**4.4.3** A party that makes a request and provides the information specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the identified in-house counsel or expert unless, within seven days of delivering the request, the party receives a written objection from the designator providing detailed grounds for the objection.

**4.4.4** All challenges to objections from the designator shall proceed under Local Rule 37-1 through Local Rule 37-4.

## **5. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION**

**5.1 Subpoenas and Court Orders.** This Order in no way excuses non-compliance with a lawful subpoena or court order. The purpose of the duties described in this section is to alert the interested parties to the existence of this Order and to give the designator an opportunity to protect its confidentiality interests in the court where the subpoena or order issued.

**.2 Notification Requirement.** If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items received by that party in this action and designated in this action as CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY, that party must do the following.

**5.2.1** Promptly notify the designator in writing. Such notification shall include a copy of the subpoena or court order.

**5.2.2** Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Order. Such notification shall include a copy of this Order.



5.2.3 Cooperate with all reasonable procedures sought by the designator whose material may be affected.

5.3 **Wait For Resolution of Protective Order.** If the designator promptly seeks a protective order, the party served with the subpoena or court order shall not produce any information designated in this action as CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY before a determination by the court where the subpoena or order issued, unless the party has obtained the designator's permission. The designator shall bear the burden and expense of seeking protection of its confidential material in that court.

## 6. **UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

If a receiving party learns that, by inadvertence or otherwise, it has disclosed designated material to any person or in any circumstance not authorized under this Order, it must immediately (1) notify in writing the designator of the unauthorized disclosures, (2) use its best efforts to retrieve all unauthorized copies of the designated material, (3) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (4) use reasonable efforts to have such person or persons execute the Agreement to Be Bound (Exhibit E-1).

## 7. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

When a producing party gives notice that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Fed. R. Civ. P. 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review pursuant to Fed. R. Evid. 502(d) and (e).

## 8. **FILING UNDER SEAL**

Without written permission from the designator or a Court order, a party may



not file in the public record in this action any designated material. A party seeking to file under seal any designated material must comply with Local Rule 79-5. Filings may be made under seal only pursuant to a court order authorizing the sealing of the specific material at issue. The fact that a document has been designated under this Order is insufficient to justify filing under seal. Instead, parties must explain the basis for confidentiality of each document sought to be filed under seal. Because a party other than the designator will often be seeking to file designated material, cooperation between the parties in preparing, and in reducing the number and extent of, requests for under seal filing is essential. If a *receiving party's* request to file designated material under seal pursuant to Local Rule 79-5.1 is denied by the Court, then the receiving party *may file the material in the public record* unless (1) *the designator* seeks reconsideration within seven days of the denial, or (2) as otherwise instructed by the Court.

9. **HANDLING AND DISPOSITION OF MATERIALS;**  
**FINAL DISPOSITION OF MATERIALS**

Within 60 days after the final disposition of this action, each party shall return all designated material to the designator or destroy such material, including all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any designated material. The receiving party must submit a written certification to the designator by the 60-day deadline that (1) identifies (by category, where appropriate) all the designated material that was returned or destroyed, and (2) affirms that the receiving party has not retained any copies, abstracts, compilations, summaries, or any other format reproducing or capturing any of the designated material. This provision shall not prevent counsel from retaining an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain designated material. Any such archival copies remain

subject to this Order.

**10. FURTHER APPLICATION**

Nothing in this Order shall preclude any party from applying to the Court for additional or different protective provisions with respect to specific material if the need should arise during this litigation. The Court shall retain jurisdiction over the parties, and over any person executing an undertaking to be bound by the terms of this Order, during the pendency of this action and for such time thereafter as is needed to carry out the terms of this Order.

**11. MODIFICATION BY PARTIES**

This Order may be modified or amended by the parties, subject to approval of the Court, provided it is in the form of a stipulation that shall be filed and made part of the record in this case.

**12. RESERVATION OF RIGHTS**

By designating any material “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY” the parties do not acknowledge that any such material is relevant, discoverable, or admissible in this action. All parties reserve the right to seek discovery of, or alternatively to resist discovery of, such material in this action.

**13. USE OF OWN MATERIALS**

Notwithstanding the foregoing, any party may use any materials or information designated by it for any purpose whatsoever.

**IT IS SO ORDERED.**

Dated:

\_\_\_\_\_  
HON. SHERI PYM  
UNITED STATES MAGISTRATE JUDGE

## EXHIBIT E-1

AGREEMENT TO BE BOUND

1 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
 2 [print or type full address], declare under penalty of perjury that I have read in its  
 3 entirety and understand the Protective Order that was issued by the United States  
 4 District Court for the Central District of California on \_\_\_\_\_ [date] in the case  
 5 of \_\_\_\_\_ **[insert formal name of the case and the number and initials  
 6 assigned to it by the court]**. I agree to comply with and to be bound by all the  
 7 terms of this Protective Order, and I understand and acknowledge that failure to  
 8 so comply could expose me to sanctions and punishment for contempt. I solemnly  
 9 promise that I will not disclose in any manner any information or item that is  
 10 subject to this Protective Order to any person or entity except in strict compliance  
 11 with this Order.

12 I further agree to submit to the jurisdiction of the United States District  
 13 Court for the Central District of California for the purpose of enforcing this  
 14 Order, even if such enforcement proceedings occur after termination of this  
 15 action.

16 I hereby appoint \_\_\_\_\_ [print or type full name] of  
 17 \_\_\_\_\_ [print or type full address and  
 18 telephone number] as my California agent for service of process in connection  
 19 with this action or oh any proceedings related to enforcement of this Order.

20 Date: \_\_\_\_\_

21 City and State where sworn and signed: \_\_\_\_\_

22 Printed name: \_\_\_\_\_

23 [printed name]

24 Signature: \_\_\_\_\_

25 [signature]

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